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THE FIRST ONE HUNDRED YEARS OF BANKING IN NORTH CAROLINA

LISSA LAMKIN BROOME*

Two hundred years ago, in 1805, the Bank of Cape Fear and the Bank of New Bern (Newbern) opened for business.¹ The former was located in Wilmington, with a branch in Fayetteville, while the latter was established in what was then the state's largest town. However, the granting of these two charters in 1804 was not a pioneering move by the North Carolina General Assembly. In fact, North Carolina was the last of the original thirteen states to charter a privately owned bank.² Despite the slow start, North Carolina is currently second only to New York in banking assets headquartered in a state.³

This article is written on the occasion of the bicentennial of the first state banks in North Carolina, and reviews the first one hundred years of banking in the state, borrowing heavily from Harry Gatton's comprehensive book, *Banking in North Carolina: A Narrative History*.⁴ The article is part of a larger project exploring the reasons for the remarkable success of North Carolina banks and attempting to identify important themes that may have fostered this rise to national

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1. T. HARRY GATTON, *BANKING IN NORTH CAROLINA: A NARRATIVE HISTORY* 27-28 (1987). The charter for what we now refer to as the Bank of New Bern was actually issued "to incorporate the Newbern Marine Insurance Company, and to establish a bank in said town." *Id.* at 27. The Marine Insurance Company came to be known as the "Newbern Bank." *Id.* at 28. In the 1890s the North Carolina legislature officially adopted a two-word form for New Bern. ROBERT S. NEALE, *THE BANK OF CAPE FEAR OF WILMINGTON, NORTH CAROLINA* xiv (1999).

2. See GATTON, *supra* note 1, at 1.

3. *Bank and Thrift Holding Companies with the Most Assets*, AM. BANKER, Jan. 25, 2004 (as of Sept. 30, 2004). Three of the eleven largest for-profit employers in North Carolina in 2004 were banks (Wachovia Corporation, Bank of America Corporation, and BB&T Corporation). Chris Richter, *Service Station: As Manufacturing Continues to Wane, the Service Sector has Made a Home for Itself in the Top Tier of Employers*, BUS. N.C., Feb. 2005, at 16, 17.

4. GATTON, *supra* note 1. This book was published by the North Carolina Bankers Association, where Mr. Gatton previously served as Executive Vice President.

prominence. In Part I, the article describes the early ambivalence towards banks that faced the few institutions that operated during the first thirty years of banking in the state. This part examines the role of state banks in issuing state bank notes, which served as currency. Part II explores the subsequent period of growth through increased chartering. Part III discusses the fate of North Carolina's banks during and in the immediate aftermath of the Civil War. This part also considers the creation of national banks and the birth of the dual banking system. Part IV catalogs the resurgence of state banks in North Carolina and the maturing regulatory oversight of state banks in the years following the Civil War. The article concludes that liberal attitudes towards branching and the evolution of a deliberate, but not confining, system of regulatory oversight provided an important backdrop for the industry's later national success.

I. 1804 - 1833: THE "RIP VAN WINKLE STATE" CHARTERS THREE BANKS

Only four banks provided banking services in North Carolina during the period from 1804 to 1833—three state chartered banks and a branch of the federally chartered Bank of the United States. Because the three state banks had extensive branch networks, twelve different towns boasted a banking presence, with several larger towns hosting multiple banks or bank branches.

A. *The "Rip Van Winkle State"*

Though North Carolina was fourth among the states in population with 630,000 residents,⁵ it remained a very rural state, home to only six towns with a population greater than 1,000.⁶ With little industry, North Carolina had the lowest per capita wealth of any state.⁷ In fact, in 1815 the state could claim just one cotton mill, three paper

5. 2 WILLIAM K. BOYD, HISTORY OF NORTH CAROLINA: THE FEDERAL PERIOD 1783-1860, at 83 (The Reprint Co. 1973) (1919). From 1800 to 1820, North Carolina was the fourth largest state in population. *Id.* In 1790, the state was third in population. GATTON, *supra* note 1, at 26.

6. *Id.* at 43. New Bern was the largest town with a population of 3,663. *Id.* The other five towns with over 1,000 residents were Fayetteville, Raleigh, Wilmington, Edenton, and Washington. *Id.*

7. WILLIAM S. POWELL, NORTH CAROLINA THROUGH FOUR CENTURIES 248 (1989).

mills, and twenty-three iron works.⁸ According to an 1830 legislative commission report, North Carolina was a “State without foreign commerce, for want of seaports, or a staple; without internal communication by rivers, roads, or canals; without a cash market for any article of agricultural product; without manufactures; in short without any object to which native industry and active enterprise could be directed.”⁹

Many North Carolinians embraced the rustic and rural character of the state, actively resisting change. In an 1820 United States Senate debate, North Carolina Senator Nathaniel Macon, a slave-owning tobacco planter from Warren County,¹⁰ asked: “Why depart from the good old way, which has kept us in quiet, peace, and harmony . . .?” This mindset led some to call North Carolina the “Rip Van Winkle” state after the Washington Irving character who slept for nearly twenty years.¹¹ Given the state’s lack of social and economic development, perhaps it is not surprising that North Carolina was the last of the original thirteen states to charter a bank.¹²

B. *The First Three State Chartered Banks in North Carolina*

Although some in the General Assembly opposed chartering banks in the state, most believed that banks were necessary for the creation of credit and capital.¹³ Bank advocates, however, differed on

8. JOHN L. BELL, JR. & JEFFREY J. CROW, *NORTH CAROLINA: THE HISTORY OF AN AMERICAN STATE* 226 (1992).

9. *Id.* at 228.

10. Nathaniel Macon was elected to the United States House of Representatives in 1791, served as the Speaker of the House from 1801 to 1807, and was elected to the U.S. Senate in 1815. BELL & CROW, *supra* note 8, at 221. Macon disliked banks and debt, whether held by individuals or the nation. *Id.* According to Macon, “Whoever is much in debt can hardly be perfectly free, he is dependent on his debtors; and a nation in debt always has its strong arm of defense tied fast.” *Id.*

11. *Id.* at 225. See also HUGH TALMAGE LEFLER & ALBERT RAY NEWSOME, *THE HISTORY OF A SOUTHERN STATE: NORTH CAROLINA* 314 (1973); POWELL, *supra* note 7, at 245 (“During the first half of the nineteenth century North Carolina seemed unaware of much that was going on anywhere, even within its own boundaries. . . . When people from other states became aware of conditions in North Carolina, they began to refer to it as the ‘Rip Van Winkle State.’”).

12. See GATTON, *supra* note 1, at 19 & 32; LEFLER & NEWSOME, *supra* note 11, at 304. Virginia established the Bank of Alexandria in 1792, and South Carolina chartered the Bank of South Carolina in 1792. GATTON, *supra* note 1, at 32.

13. *Id.* at 27.

the best way to introduce banking. One group argued for a central bank to be owned and operated solely by the State. A second group advocated for a bank to be jointly owned by the state and private interests. It was the third group, however, that prevailed in its desire to charter privately owned banks. In 1804, the General Assembly granted charters to the Bank of Cape Fear, which would operate in Wilmington with a branch in Fayetteville, and to the Bank of New Bern.¹⁴ The legislation authorizing these two banks provided, however, that the State would be permitted to purchase 250 shares of stock in each bank.¹⁵ Both bank charters were to expire on January 1, 1820.

The supporters of a state owned bank did not relent, and in 1805 a bill was passed to charter the State Bank. However, the legislation was repealed in the next session of the General Assembly, after efforts to attract subscriptions for the bank's stock fell short.¹⁶ In 1807, a bill to charter a private bank in Edenton failed, but both the Bank of Cape Fear and the Bank of New Bern gained legislative authorization to establish offices for the purpose of discount¹⁷ and deposit at locations other than those stated in their charters.¹⁸ Taking advantage of this newfound power, the Bank of Cape Fear opened a branch in Raleigh on April 8, 1807.¹⁹ Also in 1807, the state exercised its subscription rights and purchased stock in the two banks.²⁰ The State Treasurer was given authority to borrow from the banks and the state was permitted to repay its bank loans from the dividends it received on the banks' stock.²¹

One primary function of these early banks was to create a paper

14. NEALE, *supra* note 1, at 2-3. The Bank of Cape Fear received the state's first banking charter on December 19, 1804. *Id.* The Bank of New Bern received its charter a few days later, and was the first of the two banks to open for business in August 1804. *Id.* The Bank of Cape Fear opened for business on November 4, 1805. *Id.*

15. POWELL, *supra* note 7, at 238. The state reserved the right to subscribe to purchase the stock in each bank. *Id.*

16. GATTON, *supra* note 1, at 29.

17. Banks often made short-term loans to business borrowers "at discount" with the interest charge deducted from the face amount of the loan. The borrower was required to repay the full, face amount of the loan when due. Thus, the borrower paid interest in advance. THOMAS P. FITCH, *DICTIONARY OF BANKING TERMS* 145 (4th ed. 2000). In contrast, loans were typically secured by real property and ran for a period of years. NEALE, *supra* note 1, at 24.

18. GATTON, *supra* note 1, at 30-31.

19. *Id.* at 32.

20. POWELL, *supra* note 7, at 238.

21. GATTON, *supra* note 1, at 31. This was in contrast to the charter requirements that the bank stock be paid in specie. NEALE, *supra* note 1, at 3.

currency²² through the issuance of state bank notes that could be redeemed at the bank of issue for gold or silver coins (specie) of an equivalent amount.²³ When the banks made loans, the loan proceeds were paid in state bank notes.²⁴ The holder of a state bank note could use it as currency or redeem the note at the bank of issue. Because the redemption of a note while the corresponding loan remained outstanding depleted a bank's reserves of specie,²⁵ banks were only allowed to issue notes totaling less than three times the bank's capital. Thus, the first two banks, with a total authorized capital of \$450,000,²⁶ could issue bank notes totaling approximately \$1,350,000.²⁷

The market value of a state bank note depended on a complex variety of factors, including the length and difficulty of the holder's journey to the bank of issue (which was necessary to convert the note into specie), the bank's reputation for financial solvency, and whether the bank in fact had enough specie to honor all notes presented for redemption.²⁸ This gave rise elsewhere in the nation to so-called "wildcat banking."²⁹ Indeed, the business daily newspaper that now serves the banking community, the *American Banker*, began its life as *Thompson's Bank Note Reporter*, a publication that calculated the worth of each bank's notes based on a comparison of the bank's specie capital with the dollar amount of its outstanding notes.³⁰ Bankers and

22. BOYD, *supra* note 5, at 114-16.

23. Much of the specie was made up of silver coins struck by Spain. 2 SAMUEL A. ASHE, *HISTORY OF NORTH CAROLINA: FROM 1783 TO 1925*, at 198 (The Reprint Co. 1971) (1925). The United States was authorized to mint gold and silver coins, but only a little gold and no silver had been discovered in the country. *Id.*

24. RONALD PAUL AUERBACH, *HISTORICAL OVERVIEW OF FINANCIAL INSTITUTIONS IN THE UNITED STATES* 3 (1979).

25. *Id.* State banks issued state bank notes when they made loans. "This allowed the banks literally to print money through the issuance of notes that were simply a promise to pay specie at some future time." 1 JERRY W. MARKHAM, *A FINANCIAL HISTORY OF THE UNITED STATES: FROM CHRISTOPHER COLUMBUS TO THE ROBBER BARONS (1492-1900)* 129 (2002).

26. BOYD, *supra* note 5, at 117, 119 (\$250,000 of capital for the Bank of Cape Fear and \$200,000 for the Bank of New Bern).

27. ASHE, *supra* note 23, at 199.

28. LISSA L. BROOME & JERRY W. MARKHAM, *THE REGULATION OF BANK FINANCIAL SERVICE ACTIVITIES* 11 (2d ed. 2004).

29. Banks were established in the far west "where the wild cats roamed," and issued bank notes even though the bank did not have adequate reserves of specie. The wildcat bankers assumed few would ever come to the banks to redeem their notes because of the remote location. AUERBACH, *supra* note 24, at 3.

30. Paul Nadler, *Comment: Hamilton and American Banker*, AM. BANKER, Nov. 24,

merchants subscribed to this paper to determine what portion of the face value any particular bank's notes were worth.³¹

This new system of state bank notes serving as the state's paper currency forced the banks to strike a delicate balance in determining the quantity of bank notes to issue, and made them controversial market participants. On the one hand, bank notes were in demand as currency. On the other hand, excessive bank note issuance resulted in depreciation of the value of the notes. According to historians Hugh Lefler and Albert Newsome, there was "considerable" public hostility to the banks because of the belief that they were unsoundly managed and issued too many state bank notes, causing the notes to trade at a discount.³²

A second function of the private banks, assisting the state in retiring the circulating currency that it had issued in 1783 and 1785, also put them at the center of controversy. The state's currency had depreciated because the outstanding amount was more than double the state's specie reserve.³³ Moreover, the state currency was issued in pounds, shillings, and pence, rather than in the new U.S. standard of dollars and cents, and the new federal Constitution prohibited the state from issuing new currency to replace the old.³⁴ The state hoped to use the dividends it received on the stock it owned in the two private banks to buy back and then destroy some of the old state currency. The state also hoped the new banks would issue their state bank notes in exchange for the old state-issued currency, and thus retire the old currency from circulation.³⁵ The banks, however, continued to use state currency to pay their debts, thus returning the old state currency to circulation.³⁶ In what some believe to be a response to the bank's refusal to retire the state currency, the legislature considered in 1809 imposing a 2% tax on the capital stock of the banks held by private

2004, at 5. *Thompson's Bank Note Reporter* was first published in 1841. BENJAMIN J. KLEBANER, *COMMERCIAL BANKING IN THE UNITED STATES: A HISTORY* 18 (1974).

31. Nadler, *supra* note 30, at 5.

32. LEFLER & NEWSOME, *supra* note 11, at 304-05. The discount on state bank notes issued by the North Carolina banks was reported to be 20% for the notes when used in Virginia. *Id.*

33. BOYD, *supra* note 5, at 116.

34. *Id.* For a short period, the state imposed property taxes to raise funds to buy back the state currency and burn it. *Id.* This measure was suspended because of public hostility to the tax. *Id.* at 117.

35. *Id.*

36. *Id.*

individuals.³⁷ After heated debate, the tax was approved at the lower rate of 1%. The legislation also provided that the banks' charters would be surrendered if they issued more state bank notes than authorized.³⁸

On December 10, 1810, the advocates of a state owned bank finally prevailed in enacting a bill to charter the State Bank of North Carolina, which began its operations in 1811.³⁹ The legislature agreed that no new banks would be chartered in North Carolina until the scheduled expiration of the State Bank's charter in 1830.⁴⁰ The bank was to be located in Raleigh, with branches in Edenton, Wilmington, Fayetteville, New Bern, Tarboro, and Salisbury.⁴¹ Though the state espoused the idea that the State Bank was a public institution, it was in reality a privately owned corporation, albeit with the State as the single largest shareholder,⁴² and the State Treasurer as an ex officio member of the bank's board of directors.⁴³ The state was given the right to subscribe to \$250,000 of the bank's capital offering, which was not to exceed \$1,600,000. Three-fourths of the amount of the stock purchased by private investors was required to be paid in specie—gold or silver coins.⁴⁴ Perhaps for this reason the initial subscriptions for stock in the State Bank did not go as well as expected, and consequently the legislature amended the bank's charter to expire in 1835, instead of 1830.⁴⁵

The legislature hoped that the new State Bank would absorb the two private banks, which would create uniformity in the bank notes and equalize the relationship between the amount of specie reserves and the quantity of bank notes issued.⁴⁶ The two private banks were given preference in the stock subscription of the State Bank,⁴⁷ as it was

37. *Id.*

38. *Id.* It was suggested that some of the moneyed class that had fulfilled the lending function (often at very high rates) before the banks were chartered, were behind the taxation proposal hoping that a costly tax would destroy the banks. GATTON, *supra* note 1, at 31.

39. *See id.* at 31-32.

40. BOYD, *supra* note 5, at 118.

41. GATTON, *supra* note 1, at 30.

42. LARRY SCHWEIKART, *BANKING IN THE AMERICAN SOUTH FROM THE AGE OF JACKSON TO RECONSTRUCTION* 130 (1987).

43. GATTON, *supra* note 1, at 34 (\$1.6 million in capital was authorized).

44. *Id.* at 32.

45. BOYD, *supra* note 5, at 118.

46. *Id.* at 117.

47. LEFLER & NEWSOME, *supra* note 11, at 305.

assumed that the capital of both banks would be reinvested in the State Bank when the private bank charters were set to expire in 1820.⁴⁸

The State Bank was also intended to provide for redemption in specie of the state's old currency that still remained in circulation.⁴⁹ To this end, the legislature promised to exempt the State Bank's stock and dividends from the 1% tax applicable to the two private banks if the State Bank would accept the state's old currency and exchange it for bank notes or specie at the rate of 10 shillings to a dollar for the one-year period from December 18, 1816, until December 18, 1817.⁵⁰ Once this had been accomplished, the governor would declare the old state currency to no longer be legal tender, except in payments of debts to the State Bank. In turn, the State Bank was authorized to return the old state currency to the state in lieu of the dividends owed to the state on its State Bank stock.⁵¹

The three banks in North Carolina now had a combined authorized capital of \$2,050,000, which permitted note issuance of up to \$6,150,000. Despite strong demand for the state bank notes, and perhaps mindful of the legislature's displeasure in 1809 with the depreciation of the state bank notes, the banks exercised prudence in their note issuance. Thus, even after the War of 1812, which resulted in banks in other states suspending specie payments because of bank runs, North Carolina bank notes received a 4% premium in Philadelphia in 1815.⁵²

Believing that additional bank capital and bank notes were needed, the legislature abandoned its plan for the State Bank to become the sole state bank in North Carolina and, in 1814, extended the charters of the Bank of New Bern and the Bank of Cape Fear from 1820 to 1835. The legislature also increased their combined authorized capital from \$450,000 to \$1,600,000.⁵³ Each bank was authorized to issue in excess of 5,000 new shares, and the state had the right to subscribe to 1,000 of

48. BOYD, *supra* note 5, at 118.

49. *Id.*

50. *Id.*

51. *Id.*

52. GATTON, *supra* note 1, at 35; *see also* BOYD, *supra* note 5, at 119; ASHE, *supra* note 23, at 253.

53. BOYD, *supra* note 5, at 121; SCHWEIKART, *supra* note 42, at 55 (reporting that the charters were extended until 1830 instead of 1835); GATTON, *supra* note 1, at 36.

the new shares of each bank.⁵⁴ As part of the legislature's 1814 action, it also authorized the directors of the three banks to open branches or agencies wherever they wished, ensuring that the state's banking demands were met even though there were only three chartered banks.⁵⁵ Pursuant to this authority, the Bank of New Bern established its first branches in Raleigh, Halifax, and Milton. The Bank of Cape Fear established branches in the same three towns and in Salem, Charlotte, and Hillsboro.⁵⁶ For several years, the three banks were the largest corporations in the state.⁵⁷ Dividends from the bank stock held by the state were a significant source of public funds.⁵⁸ In 1819, the legislature extended the charter of the State Bank of North Carolina until January 1, 1838, and provided then for the bank's wind-up and liquidation.⁵⁹

Banks in some states were forced to suspend specie payments in 1818 because of insufficient specie reserves to support the bank notes they issued,⁶⁰ which resulted in the Panic of 1819.⁶¹ Money brokers in large cities bought North Carolina state bank notes at a discount and then brought the notes to North Carolina for redemption in specie.⁶² The North Carolina bankers decided to halt the outflow of gold and silver from the state by refusing to pay specie to money brokers. This effort, however, did not solve the specie shortfall. The money brokers sued and obtained judgments that required the banks to redeem in specie.⁶³ The situation became even more critical when the Bank of the United States⁶⁴ redeemed large quantities of state bank notes in specie.⁶⁵ Reluctantly, the banks had no choice but to demand that all borrowers repay their loans.⁶⁶

54. BOYD, *supra* note 5, at 121.

55. GATTON, *supra* note 1, at 39.

56. *Id.*

57. *Id.* at 34.

58. BOYD, *supra* note 5, at 106.

59. GATTON, *supra* note 1, at 45.

60. 1 MARKHAM, *supra* note 25, at 137.

61. *Id.*

62. GATTON, *supra* note 1, at 36; BOYD, *supra* note 5, at 122.

63. GATTON, *supra* note 1, at 36; BOYD, *supra* note 5, at 123.

64. See discussion *infra* Part I.C.

65. BOYD, *supra* note 5, at 125.

66. GATTON, *supra* note 1, at 36; BOYD, *supra* note 5, at 123-25 (detailing other measures taken by the bank to increase specie, including the State Bank's violation of its charter by purchasing cotton with bank funds and selling it at a profit for specie).

The legislature launched an investigation into how the banks handled the crisis, spurred on by disgruntled borrowers. The State Bank was attacked for not adhering to the legislature's requirement that three-quarters of the stock purchased by private investors be paid in specie.⁶⁷ A majority report of the legislature reiterated that banks be forced to redeem their notes in specie.⁶⁸ The minority report, arguing that the banks had violated clear rules and extorted the people of the state,⁶⁹ urged the Attorney General to institute *quo warranto* actions against the banks.⁷⁰ If found guilty, the banks would have been taken over by the courts and the governor required to pledge the faith of the state for the redemption of the state bank notes.⁷¹ Fierce debates between the two factions took place during late 1828 and early 1829.

The minority report was spearheaded by Robert Potter, a member of the House of Commons from Granville County, who believed that banks were a threat to society.⁷² David Swain, who would shortly thereafter become Governor and then president of the University of North Carolina, argued against the minority report, believing that the legislature had itself to blame for the excessive expansion of banking capital and note issuance.⁷³ His voice was joined by that of William Gaston, who later became a state Supreme Court Justice and was the author of the state anthem, "Old North State."⁷⁴ Gaston's powerful argument against the minority report's recommendations was that the state's investments in the banks would likely become worthless upon a

67. BOYD, *supra* note 5, at 126-27.

68. *Id.* at 126.

69. *Id.*

70. *Id.* at 127.

71. *Id.* at 128.

72. GATTON, *supra* note 1, at 36. Potter's opposition to banks helped him to win election as a representative to Congress. *Id.* at 42. He later maimed by castration two men whom he, apparently without cause, accused of liaisons with his wife. *Id.* After serving two years in jail he was reelected to the House of Commons, but expelled for gambling and taking a colleague's winnings by armed force. *Id.* Castration was thereafter made a felony, and many referred to it as "Potterizing." *Id.* Potter left the state for Texas, where he resumed a prominent role in politics. *Id.* He met his fate when a man he had tried to kill captured him and then offered him an escape by swimming across a lake. *Id.* His opponent, however, shot Potter while he was swimming. *Id.*

73. BOYD, *supra* note 5, at 128.

74. ASHE, *supra* note 23, at 422. Gaston was the legislator who advocated in 1804 for private bank charters and was instrumental in the chartering of the Bank of New Bern, GATTON, *supra* note 1, at 27, which he later served as president, *id.* at 31.

guilty verdict.⁷⁵ This was important as much of the state's revenue came from its bank stock investments. Ultimately, proponents of the minority report sought a vote on the proposition of bringing the *quo warranto* action against only the State Bank of North Carolina, but this effort was defeated by a single vote.⁷⁶ Thus, the slimmest of margins preserved the existence of the State Bank, as well as the value of the investments made in it by private shareholders and the State of North Carolina.

Judge Thomas Ruffin, who would later become a justice on the state's Supreme Court, agreed to take on the presidency of the State Bank on December 1, 1828, in the midst of the legislature's investigation into banking.⁷⁷ Because of his "high integrity" and "superior ability," he "without favor, forced the borrowers to settle" and restored confidence in the State Bank, saving "the State from what might have been a financial disaster."⁷⁸

The state's banks were required to resume specie redemption and continued their efforts to collect all outstanding loans to meet these demands. Many borrowers, however, were not able to immediately repay their loans. Thus, in the next year—1830—the private banks petitioned for an extension of their charters until 1838 to give their debtors more time to repay the loans.⁷⁹ After additional vigorous debate, the extensions were approved and the tax on the stock of the two private banks was abolished as of 1834.⁸⁰

The charters of all three of the banks in the state were set to expire in 1838. In the aftermath of the legislature's scathing report about the conduct of the private banks, various bills were introduced to charter a bank owned wholly by the state, such as existed in other states, including Alabama and Georgia.⁸¹ The bills were not successful, but it was clear that the legislature needed to address the imminent end of the three bank charters.

75. *Id.* at 41; BOYD, *supra* note 5, at 128-29 (this argument was advanced by William Gaston).

76. GATTON, *supra* note 1, at 42.

77. ASHE, *supra* note 23, at 322.

78. *Id.*

79. BOYD, *supra* note 5, at 129-30.

80. *Id.* at 130.

81. *Id.* at 130-31.

C. *The Bank of the United States*

In 1791, more than ten years before state banks appeared in North Carolina, Congress authorized the creation of a national bank—the Bank of the United States—pursuant to the recommendation of the Secretary of the Treasury Alexander Hamilton.⁸² The United States owned twenty percent of the outstanding stock, with private shareholders holding the rest. Though its creation was quite controversial,⁸³ the Bank of the United States flourished. It opened branches in Boston, New York, Philadelphia, Washington, Baltimore, Norfolk, Charleston, Savannah, and New Orleans, but did not have a branch in North Carolina.⁸⁴ The bank helped to monitor the state bank note system by regularly redeeming the state bank notes it received, thus discouraging state banks from issuing more notes than they could back by specie. Many, however, felt that the bank's success threatened the state banks in states where the Bank of the United States had decided to branch.⁸⁵ In fact, many shared the fears of Thomas Jefferson, who believed that the bank would lead to a more urban society that threatened the rural character of the United States. Congress bowed to the resulting political pressure and refused to extend the bank's charter when it expired after twenty years in 1811.⁸⁶

During the War of 1812, banks in many states were forced to suspend payments in specie as a result of runs. A second Bank of the United States was chartered by Congress in 1816 to help resolve this problem and to serve as a lender to the United States Treasury. This

82. BROOME & MARKHAM, *supra* note 28, at 10-11.

83. President George Washington surveyed his cabinet before he signed the bill and was advised by Attorney General Edmund Randolph that the bank was unconstitutional. RON CHERNOW, ALEXANDER HAMILTON 351 (2004). Secretary of State Thomas Jefferson also thought the bank was unconstitutional and its justification under the Constitution's necessary and proper clause a "perversion." *Id.* at 352. Jefferson believed that to go beyond the express powers enumerated for Congress, an action must be truly "necessary" or "indispensable." *Id.* Ultimately, President Washington was persuaded by Hamilton's detailed defense of the legislation and signed the bill. *Id.* United States Supreme Court Chief Justice John Marshall later opined that the debate over the legitimacy of the Bank of the United States was the genesis of the creation of the political parties. *Id.* at 351. The debate largely pitted congressmen from the north who supported Hamilton's efforts, against those from the agrarian south, who opposed this assertion of the federal government's authority. *Id.* at 350-51.

84. GATTON, *supra* note 1, at 25-26.

85. 1 MARKHAM, *supra* note 25, at 126.

86. *Id.*; Nadler, *supra* note 30.

bank's charter was limited to twenty years, and it established branches throughout the country, including a branch in Fayetteville that opened in 1817.⁸⁷ The Second Bank of the United States, like its predecessor, redeemed the state bank notes it received for specie, and thus helped to check the amount of bank notes that state banks issued.⁸⁸ Once again, despite its utility, many states were hostile towards the bank. In fact, fourteen states passed laws that tried to prevent the bank from collecting debts owed to it, and six states, including North Carolina, tried to tax branches of the bank located in their states.⁸⁹ The United States Supreme Court held, however, in *McCulloch v. Maryland*,⁹⁰ that Congress had the power to establish a bank and that a state had "no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress."⁹¹

The charter of the Second Bank of the United States was extended by Congress, but President Andrew Jackson vetoed the legislation, and the veto was not overridden.⁹² The bank ceased business when its charter expired in March 1836.⁹³ Views about the second Bank of the United States varied in North Carolina.⁹⁴ Some believed the bank helped to provide a stable currency by forcing state banks to resume specie payments and to hold down their note issuances. Others, however, thought the bank to be a "monster feeding upon our Vitals,"⁹⁵ recalling the bank's role in specie redemption of North Carolina's state bank notes that contributed to the state banks' specie shortfall that forced the banks to demand repayment of all their loans.

87. GATTON, *supra* note 1, at 38.

88. 1 MARKHAM, *supra* note 25, at 136; Nadler, *supra* note 30; *see also* BOYD, *supra* note 5, at 175 (noting that some blamed the Bank of the United States for contributing to the specie shortfall of North Carolina's three banks in the late 1820s by demanding payment in specie for state bank notes).

89. GATTON, *supra* note 1, at 38 (North Carolina levied, but never collected, a \$5,000 tax on the Fayetteville branch of the Bank of the United States).

90. 17 U.S. (4 Wheat.) 316 (1819).

91. *Id.* at 436.

92. BROOME & MARKHAM, *supra* note 28, at 16.

93. GATTON, *supra* note 1, at 45.

94. *Id.* at 44.

95. *Id.* (quoting Archibald C. Murphey).

II. 1834 - 1860: THE "RIP VAN WINKLE STATE" AWAKENS

A. *North Carolina Awakens*

"In the mid-1830s, the Rip Van Winkle state awoke."⁹⁶ The state's constitutional convention of 1835, championed by Governor David L. Swain, marked the beginning of a more progressive era in the state.⁹⁷ Among other reforms, the new constitution provided for the direct election of the governor by adult, male taxpayers, rather than by the legislature.⁹⁸ Edward B. Dudley, winner of the first such election in 1836, and his successors strove to initiate economic expansion and social reform.

The state invested public funds in railroads, recognizing the lack of private capital to support such a project.⁹⁹ The advent of railroads helped to develop the commercial agriculture markets and bring the state closer together.¹⁰⁰ Production of the two major crops in North Carolina, cotton and tobacco,¹⁰¹ roughly doubled between 1850 and 1860.¹⁰² By 1860, there were thirty-nine textile mills in North Carolina, more than in any other southern state. Turpentine was the state's leading manufactured item, as it had been in the colonial times. Over two-thirds of all turpentine made in the United States came from North Carolina, thanks to the longleaf pine forests along the Cape Fear River.¹⁰³

Gold mining was another major industry in North Carolina. By 1848, over 1,000 miners worked in the gold mines at Gold Hill in Rowan County. The federal government opened the U.S. Mint at Charlotte in 1837 because of North Carolina's prominence in the gold

96. BELL & CROW, *supra* note 8, at 236; *see also* LEFLER & NEWSOME, *supra* note 11, at 373 (by 1840, the Rip Van Winkle State was awake).

97. BELL & CROW, *supra* note 8, at 240-41 (Governor Swain later became president of the University of North Carolina). Important reforms of the 1835 state constitution included making representation in the General Assembly more democratic (which favored those in the western counties), removing the prohibition on Catholics serving in state office (although the prohibition remained intact for Jews and atheists), and providing for two ways to amend the state's constitution. *Id.*

98. *Id.* at 241.

99. *Id.* at 243.

100. *Id.*

101. LEFLER & NEWSOME, *supra* note 11, at 392.

102. BELL & CROW, *supra* note 8, at 249.

103. *Id.* at 251.

industry.¹⁰⁴ A private mint in Rutherford County also produced gold jewelry and gold coins between 1831 and 1857.¹⁰⁵ By the time of the Civil War, however, gold production had decreased and discoveries in California enticed many of the miners to head west.¹⁰⁶

Despite this progress, North Carolina remained a rural state.¹⁰⁷ Only two percent of the population lived in the state's twenty-five largest towns.¹⁰⁸ In 1860, Wilmington was the state's largest town, with a population of just over 9,500. New Bern topped 5,000 residents, and Raleigh and Fayetteville each claimed about 4,000 residents. Charlotte and Salisbury rounded out the list of most populous towns with just 2,000 residents each. By 1860, slaves made up about one-third of North Carolina's population.¹⁰⁹

B. State Banks

From 1834 to 1847, banking remained the province of only a handful of institutions in North Carolina. The future of even these few institutions was in jeopardy, with the charters of the three original state banks set to expire in 1838. After several unsuccessful attempts to charter a bank that would be wholly owned by the state, however, the legislature in 1834 took several steps to ensure the continuation of banking services. The charter of the Bank of Cape Fear was extended to 1855,¹¹⁰ and a charter was granted to the new Merchants Bank of New Bern, since the Bank of New Bern elected not to seek an extension of its charter.¹¹¹ In 1834, the legislature also chartered the Bank of the State of North Carolina to serve as the State Bank's successor. The

104. POWELL, *supra* note 7, at 312. In 1861, the mint was appropriated by the Confederate government. After the Civil War, the mint reopened for assaying gold, rather than coining it. The mint closed in 1913. *Id.*

105. *Id.*

106. BELL & CROW, *supra* note 8, at 250.

107. LEFLER & NEWSOME, *supra* note 11, at 401.

108. BELL & CROW, *supra* note 8, at 251.

109. *Id.* at 257; POWELL, *supra* note 7, at 355. Twenty-eight percent of the white population held slaves. BELL & CROW, *supra* note 8, at 257. Three percent of the slaveholders were planters who owned twenty or more slaves. *Id.* at 257-58. In 1790, slaves accounted for about one quarter of the total population in North Carolina. *Id.* at 257.

110. GATTON, *supra* note 1, at 46 (the charter extension was granted in 1834); BOYD, *supra* note 5, at 135.

111. GATTON, *supra* note 1, at 46. In 1834 the General Assembly also granted a charter to the Bank of Albemarle at Edenton, but that bank never opened. *Id.*

charter, which was set to expire in 1860, reserved two-fifths of the Bank of the State's stock for purchase by the state.¹¹² The Fayetteville branch of the Bank of the United States closed in 1836 upon the expiration of that bank's charter, with the Bank of the State purchasing its loans. Thus, in the end there remained just three state chartered banks in the state; a condition that would persist until 1847.

During the early 1830s the federal government enjoyed a \$40 million surplus in its treasury as a result of land speculators purchasing large amounts of government land.¹¹³ The Bank of the State benefited from this surplus by holding a deposit of approximately \$1 million from the federal government.¹¹⁴ Based on this federal deposit the bank expanded its loans and note issuances. Unfortunately, the funds were withdrawn several years later when the failure of several large cotton merchants gave rise to the Panic of 1837.¹¹⁵ The withdrawal forced the Bank of the State to contract its lending and suspend its specie payments. Most banks around the nation were forced to take similar action.¹¹⁶ Although the legislature reacted negatively to the suspension of specie, as it had during the late 1820s, it learned upon investigation that the bank had few other options. By 1842, the panic had passed and the economy had recovered.¹¹⁷

From 1847 to 1862, twenty-four banks were chartered by the General Assembly, five of which were savings banks.¹¹⁸ For the first time, the Old North State had more than three state banks. Further, by 1859 the Bank of the State, headquartered in Raleigh, had built an extensive network of branches,¹¹⁹ establishing a presence in New Bern, Fayetteville, Tarboro, Elizabeth City, Charlotte, Morganton, Leaksville,

112. *Id.* at 45. Bank stocks were often subscribed to and then paid for in installments. 1 MARKHAM, *supra* note 25, at 127. When the state's subscription for \$375,000 of the stock came due in 1837, the state treasury did not have sufficient funds to purchase the stock. BOYD, *supra* note 5, at 109. Only a distribution of surplus reserve by the federal government to the states kept the state from insolvency. *Id.*

113. GATTON, *supra* note 1, at 47.

114. *Id.*

115. 1 MARKHAM, *supra* note 25, at 149.

116. GATTON, *supra* note 1, at 46-7.

117. *Id.* at 47.

118. *Id.*

119. State bank notes could not be issued at agency offices, but presumably loans could be made there. *Id.* at 45.

Milton, Wilmington, and Windsor.¹²⁰ Similarly, the Bank of Cape Fear boasted eight branches.

The Bank of the State of North Carolina was liquidated upon the expiration of its charter in 1860.¹²¹ In 1859, however, the legislature chartered the third partially state-owned bank, the Bank of North Carolina. It took over the majority of the Bank of the State's assets and liabilities, and continued to operate a network of branches.

III. 1861 - 1868: THE CIVIL WAR, THE BIRTH OF NATIONAL BANKS, AND THE DEATH OF STATE BANKS IN NORTH CAROLINA

A. *The Civil War and State Banks*

North Carolina seceded from the Union on May 20, 1861, the last state to join the Confederacy.¹²² The state accounted for only one-ninth of the Confederacy's population, but supplied one-sixth of the Confederacy's troops, and would eventually claim more than one-fourth of all Confederate soldier deaths.¹²³ The Battle of Bentonville was the bloodiest battle fought in North Carolina with over 4,200 killed, wounded, or missing.¹²⁴ On April 26, 1865, at the Bennett farmhouse west of Durham, General Johnson of the Confederate Army surrendered to General Sherman of the Union Army.¹²⁵

North Carolina, along with the other states in the South, was devastated. The loss of life left virtually no family untouched. Many potential leaders had been cut off in their prime. Enormous property damage was evident everywhere. The will to face the future was drained from countless numbers of people. Apathy prevailed.¹²⁶

Former slaves enjoyed newfound freedom, and North Carolina planters, who previously relied on slave labor, struggled to adjust to the new

120. *Id.*

121. *Id.* at 48.

122. BELL & CROW, *supra* note 8, at 277.

123. POWELL, *supra* note 7, at 356.

124. *Id.* at 375.

125. *Id.* at 377.

126. *Id.* at 379.

economic and social order.

Upon the beginning of the Civil War, all banks in North Carolina were relieved of the legal obligation to redeem their notes for specie,¹²⁷ and were required to transfer their specie reserves to the new Confederate States of America (CSA).¹²⁸ In return, the banks received interest-bearing notes from the CSA.¹²⁹ Bank capital was drained as a result of the war effort. The sixteen banks then located in the state were called upon to loan money to the state of up to twenty percent of their capital stock to help raise and support the military.¹³⁰ By 1862, one-third of the total bank capital was committed to loans to the state for the Civil War. The state issued six percent bonds due in 1893 to pay off this debt.¹³¹ The state also taxed bank capital and bank dividends, while the Confederacy taxed cash on hand and money on loan.¹³²

Although the banks managed to survive the conflict, soon thereafter all state banks were forced into liquidation.¹³³ This outcome was inescapable once the convention called to return North Carolina to the union voted in October 1865 to cancel all war debts of the state.¹³⁴ Moreover, the Union elected not to honor the financial obligations of the CSA, including the CSA notes held by the states' banks.¹³⁵ The Bank of North Carolina was able to continue in existence until 1868, when it was placed into bankruptcy by a petition of its directors.¹³⁶ At that time the University of North Carolina still owed the bank \$90,000 on a \$100,000 loan. This loan had been secured by a deed of trust on all property owned by the University, which led the assignee in bankruptcy

127. GATTON, *supra* note 1, at 48.

128. NEALE, *supra* note 1, at 78.

129. *Id.*

130. GATTON, *supra* note 1, at 48; 3 J.G. DE ROULHAC HAMILTON, HISTORY OF NORTH CAROLINA: NORTH CAROLINA SINCE 1860, at 53 (The Reprint Co. 1973) (1919).

131. GATTON, *supra* note 1, at 49.

132. *Id.*

133. *Id.* at 51. This included the Bank of Cape Fear, which had operated continuously from 1805 to the spring of 1866. NEALE, *supra* note 1, at 3.

134. GATTON, *supra* note 1, at 54; HAMILTON, *supra* note 130, at 161; LEFLER & NEWSOME, *supra* note 11, at 477. The cancellation of the state's Civil War debts had other consequences, wiping out much of the property of the University and impairing the state's Literary Fund, which supported the public school system. GATTON, *supra* note 1, at 54. The Literary Fund began in 1825 and received income from bank stock it owned, as well as other sources. POWELL, *supra* note 7, at 258.

135. NEALE, *supra* note 1, at 80.

136. GATTON, *supra* note 1, at 55.

to sue in 1874 for the sale of the University's property. Fortunately, the court ruled that although the deed of trust was valid, no property could be sold that would destroy the University, a state institution.¹³⁷ A commissioner was left to determine what property could be sold pursuant to the court's decision. After being advised to "be liberal," the commissioner determined that seventy acres of land east of the town should be sold along with several thousand acres owned by the University in Buncombe county.¹³⁸

B. The National Bank Act of 1863

In the interest of creating a system of uniform currency to replace state bank notes and helping to raise money to finance the Civil War, the United States Congress enacted the National Bank Act in 1863.¹³⁹ This act gave the newly created Comptroller of the Currency the power to charter national banks throughout the country.¹⁴⁰ The banks were authorized to issue national bank notes if backed by U.S. government bonds.¹⁴¹ A national bank could issue notes for up to 90% of the amount of the government bonds the bank purchased and deposited with the Comptroller. The Comptroller held the government bonds in trust so that adequate funds would be available to redeem the national bank notes of any insolvent national banks.¹⁴² Thus, national banks provided badly needed funds to the U.S. Treasury by purchasing government bonds, while issuing the standard paper currency Congress desired.

To encourage state banks to cease operations or convert to the

137. *Id.*

138. *Id.* at 56.

139. KLEBANER, *supra* note 30, at 53. The original February 1863 act was the National Currency Act. *Id.* It was substantially amended in June 1864, and renamed the National Bank Act in 1874. *Id.* The legislation was based heavily on New York's Free Banking Act of 1838. *Id.*

140. The general incorporation power was a departure from the typical state practice of incorporation through special legislative act. LEONARD C. HELDERMAN, NATIONAL AND STATE BANKS: A STUDY OF THEIR ORIGINS 145 (1931). The New York statute which influenced the National Bank Act provided that a bank charter should be granted to organizers who met specific conditions and standards. John D. Hawke, Jr., Remarks Before the New York State Department of Banking 3 (Oct. 15, 2001), available at <http://www.occ.treas.gov/release/2001-89.doc>.

141. GATTON, *supra* note 1, at 52.

142. HELDERMAN, *supra* note 140, at 143.

new national charter,¹⁴³ the National Bank Act imposed a 2% tax on state bank notes. State banks, however, continued to issue state bank notes notwithstanding the tax. In 1865, the tax on state bank notes was increased to 10%, and was described by many as a “penalty” tax.¹⁴⁴ This onerous tax contributed to the collapse of the state banks in North Carolina and in other states.¹⁴⁵ Congress succeeded in driving out all state bank notes in favor of a uniform national currency. The creation of national banks, however, did not mark the end the state bank charter, as state banking fairly quickly reestablished itself.¹⁴⁶

The first banks to open in North Carolina in the immediate aftermath of the Civil War were the new national banks. The First National Bank of Charlotte was chartered in August 1865, the Raleigh National Bank of North Carolina in September 1865; the National Bank of New Bern, the First National Bank of Wilmington, and the First National Bank of Salem were all chartered in 1866.¹⁴⁷ Wachovia National Bank was chartered in 1890.¹⁴⁸ However, because national banks were required to have a minimum capital of \$50,000—a substantial sum for the times—few national banks were able to form in small cities or towns.¹⁴⁹ National banks were also precluded from making loans secured by real estate, further restricting their ability to form in all but the largest cities where there was demand for other loans.¹⁵⁰

143. KLEBANER, *supra* note 30, at 55. Although it was expected that all state banks would convert to the national charter, from February 25, 1863 until June 3, 1864, only 24 of the 456 national bank charters issued were to converting state banks. *Id.* at 54. One early obstacle to conversion was the requirement that banks abandon their names for the designation of First (Second or Third) National Bank of [City]. This requirement was removed in an 1864 amendment. *Id.* at 55.

144. GATTON, *supra* note 1, at 52. The 10% direct tax was upheld by the United States Supreme Court in *Veazie Bank v. Fenno*, 75 U.S. 533, 549 (1867).

145. *Id.*

146. *Id.* (state banks increased in number from 335 in 1870 to 12,000 in 1910).

147. *Id.* at 53.

148. NEALE, *supra* note 1, at 82 (describing this bank's connection to the Salem branch of the Bank of Cape Fear). In 1893, the Wachovia Loan & Trust Co. opened with a state charter. *Id.* In 1911, the two Wachovia banks merged to form Wachovia Bank & Trust Co. under a state charter. *Id.*

149. GATTON, *supra* note 1, at 62; KLEBANER, *supra* note 30, at 57. The minimum capital for a national bank ranged from \$5,000 in a place of less than 6,000 to \$200,000 in cities larger than 200,000 in population. *Id.*

150. HELDERMAN, *supra* note 140, at 157. The real estate loan restriction was added to the act on June 3, 1864. *Id.* National banks gained limited real estate lending abilities under the Federal Reserve Act of 1913. *Id.* at 165.

IV. 1869 - 1903: PHOENIX-LIKE, NEW STATE BANKS ARISE FROM THE ASHES

A. *New State Banks Arise from the Ashes*

Following the Civil War and the end of slavery, the state remained rural, with the economic power of planters giving way to an increase in the number of small farmers. Though in 1870 North Carolina's population exceeded 1,000,000, only three towns had more than 5,000 residents—Wilmington, Raleigh, and New Bern.¹⁵¹ Thus, the five national banks that formed in North Carolina after the Civil War remained unable to adequately serve the vast majority of the state's population. This void was further perpetuated by the Comptroller of the Currency's conclusion that the National Bank Act's silence as to branching precluded national banks from expanding by establishing branches. Thus, national banks were unable to serve smaller towns with branches.¹⁵²

State banks reemerged to fill the banking needs of smaller communities. The Bank of Greensboro was chartered in April 1869. Charters were granted shortly thereafter for the Bank of Asheville, the Bank of Mecklenburg, and the Bank of Cumberland. From 1869 to 1875 the state granted charters to thirty-one new banks.¹⁵³

The state banks were forced to reinvent their business model. Though banks had taken deposits prior to the Civil War,¹⁵⁴ most bank loans were funded by state bank notes. The 10% tax on state bank notes made this virtually impossible, forcing state banks to instead rely on deposits as their major source of funds.¹⁵⁵ Depositors accessed their funds by withdrawal and the use of checks—drafts drawn on the bank and payable to a third party. The rise of deposit banking and payment by check is cited as the innovation necessary to permit state banks to

151. GATTON, *supra* note 1, at 58 (Wilmington's population was 13,446, Raleigh's was 7,790, and New Bern was at 5,849).

152. KLEBANER, *supra* note 30, at 59 (converting state banks were permitted to retain existing branches).

153. GATTON, *supra* note 1, at 54.

154. The University of North Carolina, for instance, kept money on deposit at the Bank of the State of North Carolina prior to the Civil War, and used these funds to make payments by check. *Id.* at 46; see 1 MARKHAM, *supra* note 25, at 126 (describing the use of checks by banks in early America).

155. GATTON, *supra* note 1, at 58.

survive and to compete with national banks.¹⁵⁶ National banks, meanwhile, were able to issue national bank notes subject to the requirements of the Comptroller of the Currency.

Unincorporated and unregulated private banks operated by merchants also sprang up in the post-Civil War era.¹⁵⁷ From 1865 to 1905 private banks operated at one time or another in sixty-one cities and towns in the state. Some of these institutions later became chartered banks. For instance, Branch and Hadley of Wilson, which we now know as Branch Banking & Trust Company (BB&T), operated from 1872 to 1890 as a private bank.¹⁵⁸ Private banks were at their peak in 1902, when twenty-one were open.

Joining national banks, the private unincorporated banks, and the new state chartered banks was Freedmen's Savings and Trust Company. Freedman's was chartered by the federal government to promote savings among the newly freed slaves. Three branches were established in North Carolina from 1865 to 1868 in Wilmington, New Bern, and Raleigh. Unfortunately, the bank was mismanaged and allegedly corrupt. It was closed in 1874, and depositors received only a small fraction of their funds.¹⁵⁹

As the turn of the century neared, industrial expansion began to take hold in North Carolina, and the textile, tobacco, and furniture¹⁶⁰ industries that emerged would remain mainstays of the North Carolina economy for many years to come.¹⁶¹ By 1900, the state's population had grown to almost 1,900,000,¹⁶² and the population had shifted west. Wilmington was still the largest city, but Charlotte and Asheville were second and third, followed by Raleigh and Greensboro.¹⁶³

As the state's economic climate improved, the chartering of banks continued to increase. From 1881 to 1901, the General Assembly approved charters for 196 state banks,¹⁶⁴ and the Comptroller of the

156. See AUERBACH, *supra* note 24, at 8 (the use of checks was instrumental to the resurrection of the state banking system post-Civil War).

157. GATTON, *supra* note 1, at 54.

158. *Id.* at 62.

159. *Id.* at 57.

160. *Id.* at 59.

161. POWELL, *supra* note 7, at 406.

162. GATTON, *supra* note 1, at 58 (the population was measured at 1,893,810).

163. *Id.* (Wilmington's population was 20,976, Charlotte was at 18,091, and Asheville at 14,694).

164. Included among these banks was the Mutual Aid Banking Company, the first bank

Currency granted twenty-seven national bank charters in the state.¹⁶⁵ This brisk expansion was also marked by a natural winnowing process. Some banks never opened because their stock subscription efforts fell short. Some elected not to renew their charters when they expired and voluntarily liquidated. Other banks became insolvent, although the number of failed institutions—four national banks and eight state banks in the last half of the 1800s—was quite low.¹⁶⁶ By 1896, there were twenty-eight national banks (holding the greatest amount of assets), forty state banks, nineteen private banks, and six savings banks.¹⁶⁷ Despite this period of growth, however, banking assets per capita in North Carolina remained quite low compared with other states.¹⁶⁸

Notwithstanding the early tradition of extensive branching by North Carolina banks, from 1865 to 1899, only four banks had branches.¹⁶⁹ In 1887, the General Assembly proclaimed: “The President and board of directors may establish offices, and agencies at such times and places as they may think proper, but the principal office shall be located in North Carolina.”¹⁷⁰ Clearly, the General Assembly did not mean to stand in the way of branching by state banks.¹⁷¹

This legislative largesse for banking was not limited to branching. In fact, the General Assembly allowed state banks to engage in a broad range of activities through their specific bank charters. Some sold insurance, while others dealt in real estate or operated mines or railroads.¹⁷² The Marion Banking and Industrial Company, chartered in 1891, for example, was authorized to “build or mine, produce and sell heat, light, and power made from gas, electricity, coal, oil, steam, or

in the state organized by blacks, which operated from 1897 through 1915. *Id.* at 65.

165. *Id.* at 59. In 1875, there were thirty banks; sixty-nine in 1889, 117 in 1899 and 129 in 1907. HAMILTON, *supra* note 130, at 393.

166. GATTON, *supra* note 1, at 64-65. For instance, Battery Park Bank in Asheville was chartered in 1891. *Id.* The bank survived panics of 1893, 1897, and 1907, and was acquired by Wachovia Bank & Trust Co. in 1923. *Id.*

167. *Id.* at 61.

168. *Id.* at 63.

169. *Id.* The Bank of Hanover at Wilmington had branches in Wadesboro and Goldsboro. Morehead Banking Company of Durham operated a branch in Burlington. Cabarrus Savings Bank of Concord operated a branch in Albemarle. *Id.* The Bank of Louisburg, a private bank, had a branch located in Nashville, Tennessee. *Id.* at 63-4.

170. *Id.* at 59.

171. One could even read the limitation that the bank's principal office remain in North Carolina as an implicit authorization for interstate branching.

172. GATTON, *supra* note 1, at 65.

water, or may operate a street railway in Marion.”¹⁷³

The legislature also recognized the need for different types of banking entities and in 1887 enacted a law to permit the establishment of savings banks for small savers,¹⁷⁴ though five savings banks had already been chartered between 1847 and 1862. The first savings bank chartered pursuant to the new act was the Raleigh Savings Bank, which opened in May 1887. The second new savings bank, Wilmington Savings and Trust, was also the first bank to have trust powers.¹⁷⁵ After the turn of the Twentieth Century, twenty-one additional savings banks were formed.¹⁷⁶

B. Banking Regulation, the North Carolina Bankers Association, and the Dawn of the Twentieth Century

Although state banks grew in number, the legislature retained its authority to charter banks, rather than delegating that task to an administrative agency as other states had done. The legislature recognized the state's responsibility for oversight of the banking system and mandated in 1887 that state banks make semiannual reports to the State Treasurer.¹⁷⁷ Regular bank examinations by an independent examiner began in 1889,¹⁷⁸ and in 1891 the examiner was required to report to the State Treasurer. If a bank was insolvent or found to have been acting improperly, proceedings would be brought in the Superior Court to close the bank and appoint a receiver.¹⁷⁹

A law that imposed double liability on shareholders in the event of a bank insolvency was enacted in 1897. Pursuant to this law, if a bank became insolvent, shareholders would lose not only the amount of their initial investment but also would be required to provide an additional sum in the amount of that investment to help reimburse the

173. *Id.*

174. *Id.* at 61.

175. *Id.* at 64. Wilmington Savings and Trust was chartered in 1888. *Id.* The Mechanics Dime Savings Bank of Raleigh was chartered in 1896, followed by the Cabarrus Savings Bank of Concord in 1897 with a branch in Albemarle. *Id.* at 61.

176. *Id.*

177. *Id.* at 60. If requested by a requisite number of shareholders, a special examination of the bank could be conducted. *Id.*

178. GATTON, *supra* note 1, at 61 (the annual examination fee was \$25).

179. *Id.*

bank's unpaid creditors. This law mirrored a provision of the National Bank Act,¹⁸⁰ and continued until January 1, 1935.¹⁸¹ The 1897 law also limited loans to one borrower to 10% of paid in capital.

With the increase in state government oversight of the industry came the need for an industry trade association to advocate on behalf of the industry. In 1897, the North Carolina Bankers Association was formed to fulfill that role and to provide opportunities for bankers within the state to meet and discuss matters of mutual interest.¹⁸² The American Bankers Association had formed in 1875, and a number of other states had organized statewide associations for their bankers.¹⁸³

In 1899, the Corporation Commission was created and given the powers of the State Treasurer related to banking, including the examination of banks.¹⁸⁴ The legislature retained the power of chartering state banks for itself,¹⁸⁵ and did not relinquish it until 1903 when it enacted the first general banking law. Thus, it took almost one hundred years of banking in North Carolina for the legislature to relinquish its chartering authority and to promulgate a body of statutory law for banks and to remove itself from the business of granting bank charters. The banking law permitted banks to apply for a charter under the general incorporation laws, rather than seek a charter from the legislature.¹⁸⁶ Under the new system, the Corporation Commission issued the certificate to begin business and the Secretary of State issued the proposed charter.¹⁸⁷ For the first time, charters were not subject to overt political pressures. Within a short period, fifteen private banks converted to state charters, and at the end of 1903 only seven private banks remained in existence.¹⁸⁸ A bank could be established with a

180. The double liability feature was part of the National Bank Act from 1863, HELDERMAN, *supra* note 140, at 143, to the Great Depression. Jonathan R. Macey & Geoffrey P. Miller, *Double Liability of Bank Shareholders: History and Implications*, 27 WAKE FOREST L. REV. 31 (1992).

181. GATTON, *supra* note 1, at 61.

182. *Id.* at 64.

183. *Id.* at 1.

184. *Id.* at 61.

185. *Id.* at 5, 61.

186. *Id.* at 62. North Carolina was one of the last states to provide for the general incorporation of banks. HELDERMAN, *supra* note 140, at 162 (special legislative charters could also still be granted).

187. GATTON, *supra* note 1, at 63.

188. *Id.* at 62. By 1906, there was only one private bank. *Id.*

minimum capital of \$5,000 in a community of less than 1,500 in population.¹⁸⁹ The new banking law also required banks to maintain a reserve fund of 15% of deposits by means of cash or deposits at other solvent banks.

V. CONCLUSION

From this brief review of the first one hundred years of banking in North Carolina, there are few indicators of the later success that would be enjoyed by North Carolina banks. For the most part, the early history is undistinguished. But, with the benefit of hindsight, let me suggest several factors that may have helped to contribute to the success of North Carolina's banks. Foremost is the liberal attitude of the legislature towards branching. The 1804 charter of the Bank of Cape Fear located in Wilmington, authorized a branch in Fayetteville. The first three state chartered banks, which were the only state banks for almost forty years, all eventually had multiple branches. When more bank charters were granted in the years preceding the Civil War, this practice continued, with new charters often authorizing specific branches. When national banks began operations in the state, they lacked the specific authority to establish branches. When state banks reemerged following the Civil War, most operated as unit banks, without branches, even though the legislature reiterated in 1887 that it authorized branching without the need for specific legislative approval in the charter.

In the second one hundred years of banking in North Carolina, the authority to branch statewide would ignite expansion of banks throughout the state at a time when many other states prohibited branching entirely or placed stringent limits on the ability to branch. North Carolina banks, meanwhile, learned how to acquire a bank, merge its operation into the existing bank, and operate the acquired bank as a branch. This integration experience provided North Carolina banks with a substantial advantage when interstate banking was eventually permitted by state statute, and later by federal authorization.

Perhaps the rural character of the state, which is often blamed for the state's early lack of progress, is important in understanding the

189. *Id.* at 66.

legislature's liberal attitude toward branching. Without branches, the early North Carolina banks may have been unable to access sufficient capital and make sufficient loans to sustain profitable operations in any of the state's small towns. Conversely, in states with more concentrated populations, banks could perhaps satisfy their needs for capital and loans without branching. Further, once banks were successfully established in those larger cities, it may have been politically difficult to authorize the city banks to branch into smaller communities where locally owned banks may have been unable to compete with a branch of a larger bank.

Also, North Carolina state banks, though creatures of limited powers granted by the legislature in the charter, did not have narrow powers. During the Nineteenth Century state banks were permitted to engage in a variety of what would now be considered nonbanking activities, such as operating railroads, mines, and engaging in real estate transactions. Though later federal law would greatly inhibit the ability of state banks to engage in a broad range of activities, this early liberal spirit never completely died. For example, North Carolina banks would enjoy the ability to act as an insurance agent throughout the next hundred years of banking, while the ability of national banks to do so was quite limited until recent years. BB&T, for one, benefited greatly from this ability, becoming one of the largest insurance agencies in the nation.

The first one hundred years of banking also defined the landscape within which North Carolina banks would operate for the second hundred years. Perhaps the most defining development came in 1865, when Congress tried to tax state banks out of existence. From this event, the dual banking system emerged. One vivid example of the innovation fostered by the competition inherent in the dual state-national chartering system was the wide-scale adoption by state banks of deposit banking and payment by check that would become the predominant funding mechanism for both state and national banks.

The contrast between the state and national bank chartering schemes present during the Nineteenth Century continues to some extent today. National banks are far fewer in number than state banks, but control a majority of bank assets.¹⁹⁰ Although Congress attempted

190. BROOME & MARKHAM, *supra* note 28, at 183.

to equalize the powers of state and national banks in 1991, there are still opportunities for state banks to engage in agency activities and in certain activities as principal that are not permitted for a national bank.¹⁹¹

Finally, the first one hundred years of banking in North Carolina saw a slow yet beneficial depoliticization of the banking industry, likely a necessary step for the industry to flourish. From the beginning of banking in the state in 1804, the state legislature maintained tight control over banking—dispensing bank charters that dictated minimum capital, branch locations, and permissible powers. The legislature also intervened on various occasions to exert influence on the amount of currency available in the state through the notes issued by state banks. However, as a shareholder of the first two private banks and the largest single shareholder of the first State Bank of North Carolina and its successors, the state was clearly not an unbiased regulator. This mixture of state ownership and private enterprise politicized banking in the state. At a debate over whether to charter a bank wholly owned by the state, William Gaston made clear his position:

I lay it down as sound rule, that a State never should have any concern in a bank. The alliance, like that between Church and State, is unnatural. It corrupts all parties. . . . I would have banks owned solely by individuals—managed by directors having deep personal interest in their good conduct, and appointed by the brother stockholders.¹⁹²

On several occasions, politics almost ended the existence of the banks. Thus, the end of the state's stock ownership with the liquidation of the Bank of North Carolina after the Civil War was an important development that may have lead to the increased chartering of banks by the legislature. Without the need to protect the state's stock holdings, legislators may have been inclined to grant more charters and encourage more competition. Moreover, the end of the legislature's hands-on

191. *Id.* at 245-46 (describing the Federal Deposit Insurance Corporation Act and its amendment of section 24 of the Federal Deposit Insurance Company Act, codified at 12 U.S.C. § 1831a).

192. GATTON, *supra* note 1, at 41.

involvement with chartering banks in 1903 marked the dawn of a new era in banking and banking regulation in North Carolina.¹⁹³

The second hundred years of banking saw remarkable growth in North Carolina's banks, and made the state a major financial center. As the third century of banking in North Carolina begins, we need to be mindful of the history of banking to avoid the mistakes of the past and to continue to foster the innovation and expansion necessary to ensure North Carolina's preeminence in banking continues.

193. It was not until 1921, in a major rewrite of the 1903 banking statute that remains the framework of today's banking regulation in North Carolina, that a banking department was established within the Corporation Commission. *Id.* at 74. The regulation of banking was transferred from the Corporation Commission to a Banking Commission and a Commissioner of Banks in 1931, *Id.* at 78-79, making North Carolina the last of the forty-eight states to establish a bank regulatory agency, KLEBANER, *supra* note 30, at 95.

